

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 20-12

August 25, 2020

TO: All Regional Directors, Officers-in-Charge, and Resident Officers

FROM: Peter B. Robb, General Counsel

SUBJECT: Remote Unfair Labor Practice Hearings During COVID-19 Pandemic

Since the Board created the ability to hold hearings remotely through video conference technology, Regional Offices have been working with the Division of Operations-Management to deal with actual and potential issues that might make conducting such hearings inappropriate. As discussed below, recent Board decisions have now provided guidance on whether to hold hearings by video technology, especially when parties oppose hearings based on inherent limitations with existing technology. Thus, the Board's guidance generally supports the initial scheduling, and holding, of hearings by video conference in most cases.

In *William Beaumont Hospital*, 370 NLRB No. 9 (2020) and *XPO Cartage, Inc.*, 370 NLRB No. 10 (2020), the Board recently granted requests for special permission to appeal – and then denied those appeals on the merits – administrative law judge orders to conduct unfair labor practice hearing entirely by videoconference in view of public health concerns deriving from the current Coronavirus Disease (COVID-19) pandemic. The Board rejected arguments that the COVID-19 pandemic did not constitute “compelling circumstances” warranting remote hearing via video technology and characterized as “speculative” sundry problems parties in those cases predicted would occur.

In light of this guidance from the Board, the ongoing status of the COVID-19 pandemic in the United States, and the significant number of unfair labor practice complaints pending hearing, Regions should move forward in scheduling remote unfair labor practice hearings,¹ including cases in which the complaint has already issued, as long as neither of the following conditions apply:

- The Region believes that unusual aspects of the contemplated trial make video hearing unfeasible;

¹ Effective immediately, Regions do not need Operations-Management approval to move forward with video unfair labor practice hearings; any pending requests for approval that are consistent with the considerations herein are granted.

- There are witnesses the General Counsel wishes to call who do not have access to equipment that will enable a connection to the video technology platform the Agency is using for remote hearings;

Where either of these factors are present, the Region should consult with the Division of Operations-Management.

/s/
P.B.R.